

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Preemption of Article 52 of the)	MB Docket No. 17-91
San Francisco Police Code Filed by the)	
Multifamily Broadband Council)	

REPLY COMMENTS OF MILL CREEK RESIDENTIAL TRUST

Mill Creek Residential Trust ("Mill Creek") offers these reply comments in support of the Petition for Preemption of Article 52 of the San Francisco Police Code (the "Petition") filed by the Multifamily Broadband Council ("MBC").

When initially passed, many of the key terms of Article 52 seemed broad and ambiguous, and its enforcement mechanisms harsh and lopsided. Initial comments filed in this Matter have deepened the confusion, since even the architects and supporters of Article 52 do not agree on its interpretation and application. Against this backdrop of uncertainty, disputes will arise under Article 52, allowing well-funded service providers to employ qui tam-type enforcement mechanisms to notify MDU owners of alleged violations, then institute their own private enforcement activities under the Police Code.

Mandatory wire sharing and the enforcement mechanisms under Article 52 will discourage infrastructure investment in apartment communities and will harm competition, particularly because property owners will be unwilling to fight legal battles with service

providers who have, in effect, been deputized by the City and County of San Francisco to enforce the ordinance for their own benefit.

Given these facts, Mill Creek asks that the Commission grant the Petition.

BACKGROUND.

Mill Creek is a real estate investment trust based in Dallas, Texas, that develops and operates apartment communities throughout the United States, including in the City of San Francisco, California. Since its creation in 2011, Mill Creek has developed more than 25,000 apartment homes. In 2017, Mill Creek expects to open more than 5,000 additional apartments in markets throughout the United States.

Mill Creek works to provide residents with options from multiple communications providers whenever possible. Mill Creek routinely brings in two, three, or four communications providers, as well as a Wi-Fi provider for complimentary wireless broadband services in common areas, as a property amenity. Additionally, Mill Creek sometimes installs distributed antenna systems and Wi-Fi calling systems, enabling cellular carriers to also offer their broadband Internet services, affording Mill Creek residents even more options.

As a developer of apartment communities and an innovator looking to deploy forward-looking technologies, Mill Creek has deep reservations about unintended consequences of Article 52.

CONCERNS OF AN APARTMENT DEVELOPER.

Mill Creek makes considerable investments in communications infrastructure to enable multiple communications providers to offer services in its communities. This "owner

infrastructure" is complemented by communications providers who install "provider infrastructure" to deliver the communications services to residents.

For example, at a recently constructed apartment community, Mill Creek and communications providers installed:

- A fiber-to-the-unit system to each unit for use by the ILEC, which currently delivers Internet service with speeds up to 1 Gbps;
- A hybrid fiber-coaxial system for use by the MSO, which currently delivers Internet service with speeds up to 300 Mbps (which is likely to increase to 1 Gbps with DOCSIS 3.1);
- A coaxial cable system for use by a private cable operator (PCO) for satellite video services;
- A second fiber-to-the-unit system for use by an additional ISP, delivering speeds up to 1 Gbps;
- Wiring to multiple common area locations where Wi-Fi services are available to residents at broadband speeds, as a property amenity; and
- Additional conduit pathways and wiring to potential antenna locations throughout the apartment community in case an in-building cellular alternative becomes necessary.

Mill Creek could never justify building out the infrastructure necessary for these six communications networks, without participation from communications providers. However, since the passage of Article 52, the market has changed in San Francisco, leading Mill Creek to believe that a similarly robust arrangement is unlikely under the new ordinance. Mill Creek has found it far more difficult to obtain service proposals from providers in San Francisco. In

negotiations for new San Francisco multifamily communities, Mill Creek has experienced the following unique challenges:

- One communications provider, who believes the home run wiring it interconnects with is exempt from Article 52, will install, operate, and maintain its home run wiring at the apartment communities.
- A second communications provider, who believes the home run wiring it interconnects with may be taken under Article 52, continues to battle over who will provide and install the home run wiring. This same provider refuses to maintain and upgrade any home run wiring at the apartment communities, because a multitude of competing providers could utilize the wiring and dramatically increase the communications provider's operating costs. In the past in San Francisco—and in the present *elsewhere* in the United States—this communications provider would not hesitate in agreeing to install, maintain, and repair home run wiring.
- A third communications provider will serve the apartment communities; but, because of Article 52, it expects Mill Creek to absorb the entire expense for its system.
- A fourth communications provider—one of the providers that Mill Creek has relied upon for in-building wireless calling in the past—filed a comment in this Matter stating that it cannot justify doing business in San Francisco, under Article 52.
- One major communications provider stated that, if Mill Creek would not accede to its terms, it would wait for Mill Creek to install inside wiring in its apartment communities, then overbuild its distribution plant and exercise its rights under Article 52 to gain access to Mill Creek's inside wiring. When confronted about the threat in the context of this

Matter before the FCC, the communications provider backpedaled, insisting that it was "just joking."

Mill Creek's recent experiences—including the alleged "joke"—provide concrete evidence of Article 52's practical, market-disruptive consequences. The ordinance results in reduced communications infrastructure, fewer viable provider options (and fights among providers over use of the reduced amount of infrastructure), greater operating expenses for all parties involved, the constant specter of coercive litigation, and, most importantly, a poorer resident experience, as apartment developers and managers attempt to add "low voltage wiring specialist" to the many hats they already wear.

Mill Creek's experiences and concerns are not unique. If Article 52 stands and municipalities are allowed to implement their own shadow inside wiring rules, a thicket of complex, conflicting ordinances will emerge, further complicating multifamily developers' efforts to ensure that residents have a choice of reliable, high-quality service options. The proponents of Article 52 are open about their aspirations for precisely this outcome, with CALTEL going so far as to call for the Commission to submit Article 52 to the Broadband Deployment Advisory Committee "as an example of a pro-competitive, barrier-removing 'model code' for municipalities."¹ The process will be politicized. Some cities may allow a free-for-all over property owners' inside wiring for the supposed greater good of the community. Others may tip the scales to favor one class of communications provider over another. And yet others take use of property owners' inside wiring for implementation of their own municipal broadband systems, regardless (or even *because*) of the disruptive impact it will have on existing service providers in the market. The result will be confusion. And lawsuits.

¹ Comments of CALTEL, p. 2.

CONCERNS REGARDING FUTURE TECHNOLOGY INITIATIVES.

Mill Creek consistently tests and implements new technology initiatives. In furtherance of these initiatives, Mill Creek has installed, and hopes to continue to install, extra inside wiring that it can use for future technologies. Some of these initiatives are proprietary and some are more routine, such as implementing home automation.

For example, Mill Creek is developing plans to deploy Ethernet wiring to each unit at its apartment communities in preparation for hub-based home automation devices, power over Ethernet door locks, and Wi-Fi calling. Under the terms of Article 52, Mill Creek could be compelled to give access to that existing wiring because it is not presently used "for the continued provision of any existing essential services."² There is zero incentive for Mill Creek to invest in forward-looking infrastructure, if communications services providers can wrest control of that inside wiring for their own benefit, leaving Mill Creek unable to pursue its own planned initiative.

Similarly, if Mill Creek installs additional cabling to address in-building cellular coverage issues (i.e., wiring to each unit and common areas to implement a full-property in-building wireless system), that wiring can be redirected from its intended use, making it difficult if not impossible for Mill Creek to rectify in-building coverage issues.

CONCLUSION.

Mill Creek respectfully urges the Commission to grant the Petition and preempt Article 52 of the Police Code.

² Article 52, §5206.b(5)(E)

Respectfully submitted,

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